

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

1997 Annual Access Tariff Filings

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CC Docket No. 97-149

PETITION FOR RECONSIDERATION OF
THE SBC COMPANIES

Pursuant to Section 1.106 of the rules of the Federal Communications Commission (Commission), Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (collectively, the SBC Companies) hereby respectfully request that the Commission reconsider and reverse that portion of its recent order on the SBC Companies' 1997 Annual Access Tariff Filings¹ which requires the use of an "R" adjustment for the removal of the equal access amortization.

Reconsideration of the 1997 Annual Filing Order is also pursuant to 47 U.S.C. Section 405(b)(1) which requires that within 90 days of the filing of this petition, "the Commission shall issue an order granting or denying such petition."

I. BACKGROUND

The 1997 Annual Filing Order found that:

removal of equal access amortization from LEC rates will be accomplished by an exogenous adjustment to each LECs' PCI because an exogenous adjustment is the mechanism established in the rules for adjusting the PCI for changes other than inflation and the X-factor. As explained in further detail below, we conclude that

¹ 1997 Annual Access Tariff Filings, CC Docket No. 97-149, Memorandum Opinion and Order (FCC 97-403) (December 1, 1997) (1997 Annual Filing Order).

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this exogenous adjustment should also take into account the growth in revenues that has occurred since 1991.²

The Order recognized that "the Commission has not required an "R" value adjustment to the PCI to reflect the end of the amortization of some costs."³ The Order specifically noted that in the cases of the equal access costs, the depreciation reserve deficiency and inside wiring amortizations, the Commission had not ordered any "R" adjustment. The Order goes on to recognize that "[t]he Commission also did not require an "R" value adjustment for the removal of payphone costs from the CCL charge coincident with the deregulation of LEC payphones in 1996."⁴

In further detail, the Order notes that:

With regard to the completion of the Other Post Employment Benefits (OPEB) amortization, the Bureau ... concluded that it would not require the LECs to make an "R" adjustment for the removal of OPEB costs in their 1995 annual access tariff filings, because the Commission had not specifically required such an adjustment in the *First Report and Order*.⁵

The Order also rejected arguments that a rulemaking would be required to institute the "R" adjustment, holding that the Commission "may lawfully make interpretations of price cap rules and requirements, including Section 61.45(d) pertaining to exogenous adjustments, in the context of declaratory rulings in tariff investigations."⁶

² 1997 Annual Filing Order, para. 109.

³ Id., para. 117.

⁴ Id., para. 117.

⁵ Id., para. 118.

⁶ Id., para. 119.

II. THE ORDER'S TREATMENT OF THE EQUAL ACCESS EXOGENOUS COST CHANGES SHOULD BE REVERSED.

This part of the 1997 Annual Filing Order should be reversed. The precedent of the Commission's past decisions should be followed, and the Commission must not undermine the effect of its prior orders. The appropriate path for the Commission to pursue with respect to the equal access costs is a full rulemaking with appropriate notice and comment, not an ad hoc determination that an "R" adjustment is to be used.

The 1997 Annual Filing Order fails to give a reasoned explanation for its change from the four previous instances where a "R" adjustment was not required. The Order states, in effect, that the use of an "R" factor was not discussed in three of the orders and was not mandated by a prior order of the Commission in the case where it was discussed.

Merely because the Commission did not specifically address the "R" factor in the depreciation, inside wire, and payphone cases does not mean those cases cannot stand for precedent on this issue. The Commission's action here implies that it somehow forgot to address this matter in each of the three cases. For the Commission to deviate from its past actions, it must provide a detailed, reasoned analysis, which it has failed to do here.

Instead, the order does "a remarkable job of rebutting the presumption of [the Commission's] own expertise" by reversing field without adequate explanation. See AllTel Corporation v. FCC, 838 F.2d 551, 562 (D.C. Cir. 1988). Such an about-face is arbitrary and capricious decisionmaking. See Mobile Communications v. FCC, 77 F.3d 1399, 1407 n. 2 (D.C. Cir.) (changed decision is arbitrary where Commission does not provide "reasoned analysis" showing that its decision was being "deliberately changed, not casually ignored"), cert. denied,

117 S. Ct. 81 (1996); Arkansas AFL-CIO v. FCC, 11 F.3d 1430, 1441 (8th Circuit 1993) (agency may change policy only if it “cogently explains” the reason for the change). Stating, in effect, that the matter has simply not been addressed previously is no cogent explanation. The rules do not require the use of the “R” factor and that is the key reason why no such adjustment has been, or should be, appropriate.

Even the OPEB case (which the order cannot attempt to distinguish through a claim that the issue was not discussed) supports the SBC Companies’ position here. The 1997 Annual Filing Order states that in the OPEB case

the Bureau ... concluded that it would not require the LECs to make an “R” adjustment for the removal of OPEB costs in their 1995 annual access tariff filings, because the Commission had not specifically required such an adjustment in the First Report and Order.⁷

As noted in the 1997 Annual Filing Order, the Access Reform First Report and Order did not “specifically require such an adjustment” (the use of an “R” factor). Thus, under the logic of the OPEB case cited in the 1997 Annual Filing Order, the Commission is without power to impose an “R” factor, since it did not address whether one should apply in the Access Reform First Report and Order.

The Order’s claim that Section 61.45(d) provides authority for its action reads too much into the rule. Under this “argument,” virtually any change to the price cap rules could be justified. Instead, just as the Commission was required to change the rules before further OPEB exogenous costs could be rejected, the Commission cannot create a new “R” adjustment rule except through a rulemaking. Even then, such an adjustment could not be justified.

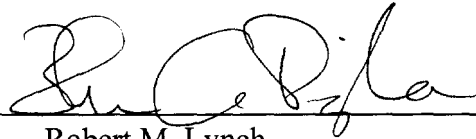
⁷ Id., para. 118. (emphasis added).

II. CONCLUSION

For the foregoing reasons, the SBC Companies respectfully request that the Commission reconsider and reverse that portion of its recent order on the SBC Companies' 1997 Annual Access Tariff Filings which requires the use of an "R" adjustment for the removal of the equal access amortization.

Respectfully submitted,

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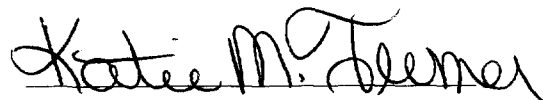
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December 31, 1997

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "PETITION FOR RECONSIDERATION" in Docket No. 97-149 has been filed this 31st day of December, 1997 to the Parties of Record.

A handwritten signature in cursive script that reads "Katie M. Turner". The signature is written in dark ink and is positioned above the printed name.

Katie M. Turner

December 31, 1997

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